

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT)(Ins) No. 684 of 2019

IN THE MATTER OF:

Mr. Paresh Patel

...Appellant

Versus

**M/s. Shah Kirit Kumar
Babulal Ni Company & Ors.**

...Respondents

Present:

For Appellant: Mr. Anandodaya Mishra, Advocate

ORDER

15.07.2019 The only ground taken by the Appellant is that the application u/s 9 of the 'Insolvency and Bankruptcy Code, 2019 filed by the 1st Respondent – 'M/s. Shah Kiritkumar Babulal Ni Company' (Operational Creditor) was admitted by the impugned order dated 7th June, 2019 without notice to the 'Corporate Debtor'. However, if on such ground we remit the case to the Adjudicating Authority that will be futile and we wanted to know the grounds the 'Corporate Debtor' could have opposed.

It is submitted that there is no documents or agreement in support of the claim.

However, from the impugned order we find that 'Operational Creditors' had produced records which enclosed the copies of the invoices, copies of the translated invoices for castor seed, invoices for sacks and debit memo and copies of invoices of sacks issued by the 'Corporate Debtor' to the 'Operational Creditor'. It is also placed on record the certified copy of the GST certification of provisional registration issued by the Government of India and in support of the claim as shown that the 'Corporate Debtor' issued a cheque dated 17th August, 2018 for

the claimed amount drawn on Bank of Baroda for Rs. 5,47,69,909/- in favour of the 'Operational Creditor' which appears to have been bounced. A copy of 'Form C' has also been showing that Demand Notice u/s. 8(1) was issued by the 'Operational Creditor'. It appears that no reply has been filed. Learned counsel appearing on behalf of the Appellant submits that the quality of the goods are not up to the mark but there is nothing on record to suggest that any dispute was raised with regard to the quality of the product prior to issuance of the Demand Notice u/s 8(1) of the I&B Code on 20th October, 2018. It was in this background, we are not inclined to remit the case as it would have been futile in absence of any objection.

At this stage, learned counsel appearing on behalf of the Appellant prays for some time to obtain instructions as if there is any 'pre-existence dispute' and service of the same on the 'Operational Creditor' prior to 28th October, 2018. On his request, the appeal is adjourned. The Appellant may file an additional affidavit within a week.

Post the case 'for orders' on **29th July, 2019**. The appeal may be disposed of on the next date.

[Justice S.J. Mukhopadhaya]
Chairperson

[Balvinder Singh]
Member (Technical)

[Kanthi Narahari]
Member (Technical)